

DEC 14 2005

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DIOSDADO RODRIGUEZ LEYVA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72426

Agency No. A95-291-535

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Diosdado Rodriguez Leyva, proceeding pro se, petitions this court for review of the Board of Immigration Appeals' ("BIA") April 15, 2004, denial of his motion to reopen the BIA's decision affirming an immigration judge's denial of his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cancellation of removal application. We have jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Azanor v. Ashcroft*, 364 F.3d 1013, 1018 (9th Cir. 2004), we deny the petition in part and dismiss it in part.

The BIA did not abuse its discretion in denying Rodriguez Leyva's motion to reopen. Although Rodriguez Leyva presented evidence that he had married a legal permanent resident after the BIA's denial of his cancellation of removal application, he made no contention whatsoever of exceptional and extremely unusual hardship to his new wife. He therefore did not prove prima facie eligibility for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003); *see also Azanor*, 364 F.3d at 1023 (holding that the BIA did not abuse its discretion by denying a motion to reopen that did not state a prima facie case for ineffective assistance of counsel).

We lack jurisdiction to consider Rodriguez Leyva's newly raised contention that his new wife will suffer exceptional and extremely unusual hardship based on her pregnancy because he did not present this contention to the BIA. *See Rodas-Mendoza v. INS*, 246 F.3d 1237, 1240 (9th Cir. 2001).

PETITION DENIED IN PART, DISMISSED IN PART.